S.B. CIVIL WRIT PETITION NO.1378/2005.
(MAHESH PUROHIT VS. STATE & ORS.)

DATE OF ORDER : 17.10.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. P.K. Lohra for the petitioner/s.
Mr. B.L. Tiwari, Dy.GA, for the respondents.

The labour court, Jodhpur by its award dated 30.10.2002 due to non-appearance of the workman or its representative held that no dispute remains between the parties. An application thereafter was preferred by the workman to re-call the award dated 30.10.2002, but the same also stood rejected by the order dated 13.09.2004. Hence, this petition for writ is preferred assailing validity, propriety and correctness of the order dated 13.09.2004 and the award dated 30.10.2002.

The Hon'ble Supreme Court in the case of Virendra Bhandari vs. Rajasthan State Road Transport Corporation reported in (2002) 9 Supreme Court Cases 106 while considering powers and duties of the Labour Court held as under:

> "A perusal of the award made on the earlier occasion will clearly indicate there is no adjudication of the dispute at all. All that was stated was that the parties concerned had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the

> issue referred to it, not that the dispute itself does not exist. When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government such a matter can be referred under Section 10 of the Industrial Disputes Act. What is to be borne in mind in proceedings of this nature is that the industrial disputes are referred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. That aspect seemed to have been lost sight of by the Tribunal on the first occasion and by the High Court in the order under Appeal. In this background, it was certainly permissible for the Government to have made the second reference on which occasion after inquiring into the mater, the Tribunal adjudicated the matter finally."

In view of the judgment referred above, the award by saying that no dispute remains between the parties is apparently erroneous.

Accordingly, this petition for writ is allowed, the award dated 30.10.2002 and the order dated 13.09.2004 are declared illegal and, therefore, are quashed. Consequently, the labour case No.49/2002, Mahesh Purohit vs. Chief Engineer,

Public Health and Engineering Department, Jodhpur is restored. The respondent Labour Court is directed to adjudicate the industrial dispute referred above on merits. It is expected that the same shall be expeditiously decided preferably within a period of one year from today.

No order to cost.

(GOVIND MATHUR)J.

Anil/